



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/597,191

11/07/2006

Deborah E. Wilson

4239-64793-03

7477

36218 7590 05/22/2009

KLARQUIST SPARKMAN, LLP
121 S.W. SALMON STREET
SUITE #1600
PORTLAND, OR 97204-2988

EXAMINER

SMITH, JENNIFER A

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

05/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,191	Applicant(s) WILSON ET AL.	
	Examiner JENNIFER A. SMITH	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Application

Applicants have affirmed the telephonic election of the invention of Group II with traverse in the reply filed on 2/24/2009. The traversal is on the ground(s) that the claims have been amended to depend from the elected claims. This is not found persuasive because in regard to the instant claims, the common technical feature among the claimed inventions I-II is the decontamination of a material contaminated with a bioweapon. The question of unity of invention has been reconsidered retroactively by the examiner in view of the search performed; a review of Torregross et al. (US Patent No. 4,298,426), makes clear that the claimed species is not novel over the prior art (the instantly claimed decontamination apparatus). The reference discloses that the apparatus as claimed can be used to practice another and materially different process. In the instant case the decontamination apparatus as claimed can also be used in a process for treating and bleaching wood pulp or flour. The prior art reference teaches this in claim 41 and Figure 1 [Described in US Patent No. 4,298,426].

Newly submitted claim 42 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: New claim 42 is directed to a porous article, a distinct invention from the apparatus previously examined. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the

Art Unit: 1793

merits. Accordingly, claim 42 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

. The requirement is still deemed proper and is therefore made FINAL.

Claims 1-23 and 42 remain withdrawn.

Claims 39-42 are new.

Claims 24-41 are presented for examination.

Withdrawal of Claim Objections

The objection to claim 27 has been withdrawn in view of Applicant's amendments to the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-41 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention.

Applicants have submitted a Power Point presentation that discloses conception and actual reduction to practice of the claimed invention prior to September 10, 2002. The on-sale bar of 35 U.S.C. 102(b) is triggered if the invention is both (1) the subject of a commercial offer for sale not primarily for experimental purposes and (2) ready for patenting. *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 67, 48 USPQ2d 1641, 1646-47 (1998). See MPEP 2133 and 2133.03.

"As evidenced by Exhibit A, page 17 of the PowerPoint presentation provides a schematic of ***the claimed apparatus***. The apparatus disclosed on page 17 of the PowerPoint presentation also corresponds with Figure 1 of the instant application. Additionally, pages 18-20 of the PowerPoint presentation are photographs of components from the claimed apparatus. For example, page 18 shows a photograph of a "CDG Laboratory Mail Process Reactor". The CDG Laboratory Mail Process Reactor is a "selectively sealable decontamination chamber" (see Figures 1 and 3 (component (90)) of the instant application). Additionally, page 19 of the PowerPoint presentation shows a photograph of a "CDG Laboratory C102 generator and process controller". This feature corresponds to components (32) and (22) found in Figure 1 of the instant application and represent a means for generating and delivering chlorine dioxide to the sealable decontamination chamber. Page 20 of the PowerPoint presentation is a photograph of a "CDG Laboratory Humidification Chamber". The humidification chamber shown on page 20 corresponds with component (14) found in Figure 1 of the instant application and is a means for humidifying the sealable decontamination

chamber. Accordingly, applicants respectfully submit that the inventors were in possession of the claimed apparatus and methods prior to the provisional filing date of the Nelson et al. reference.”

Withdrawal of Claim Rejections

The rejection of claims 24-26, 28, 31, 33, 34, and 36 under 35 U.S.C. 102(e) as being anticipated by Nelson et al. (US Patent Publication No. 2004/0101438 A1), as generally set forth on 11/24/2008, is withdrawn in view of the the declaration under 37 CFR 1.132, filed 2/24/2009

The rejection of claims 35, 37, and 38 under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US Patent Publication No. 2004/0101438 A1), as generally set forth on 11/24/2008, stands, is withdrawn in view of the the declaration under 37 CFR 1.132, filed 2/24/2009

The rejection of claims 27, 29, 30, and 32 under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US Patent No. 2004/0101438 A1) as applied to claims 25 and 28 above, and further in view of Szabo (US Patent No. 5,547,590), as generally set forth on 11/24/2008, stands, is withdrawn in view of the the declaration under 37 CFR 1.132, filed 2/24/2009

Response to Arguments

The declaration under 37 CFR 1.132 filed 2/24/2009 is sufficient to overcome the rejection of claims 24-38 based upon the prior art reference, Nelson et al. (US Patent Publication No. 2004/0101438 A1).

An issue of public use or on sale activity has been raised in this application and accordingly claims 24-41 have been rejected

Applicants have submitted a Power Point presentation that discloses conception and actual reduction to practice of the claimed invention prior to September 10, 2002. Applicant's arguments are moot in view of the new ground(s) of rejection. It should be noted that 35 U.S.C. 102(b) may create a bar to patentability if the device in public use or placed on sale anticipates the later claimed invention. See MPEP 2133 and 2133.03.

Conclusion

Claims 24-41 are rejected.

No claims are allowed.

Applicant's submission prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 1793

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. SMITH whose telephone number is (571)270-3599. The examiner can normally be reached on Monday - Friday, 9:30am to 6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A. LORENZO/
Supervisory Patent Examiner, Art Unit 1793

Jennifer A. Smith
May 12, 2009